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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV95-955-2FIR]

Vidalia Onions Grown in Georgia; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses under Marketing Order No. 955 for the 1995-96 fiscal period. Authorization of this budget enables the Vidalia Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 16, 1995, through September 15, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 941-299-4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Vidalia onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995-96 fiscal period, which began September 16, 1995, and ends September 15, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 240 producers of Georgia Vidalia onions under this marketing order, and approximately 145 handlers. Since the

interim final rule was issued, information regarding a reduction in the number of producers from approximately 250 to 240 was received. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met July 20, 1995, and unanimously recommended a 1995-96 budget of \$343,000, \$11,000 more than the previous year. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Dues and subscriptions, \$2,500 (\$2,000), equipment maintenance, \$1,600 (\$750), office overhead, \$6,000 (\$3,000), office supplies, \$3,500 (\$3,000), telephone, \$5,000 (\$4,000), printing, \$2,200 (\$2,000), postage and courier, \$6,000 (\$5,000), employee salaries, \$65,000 (\$60,000), miscellaneous general and administrative, \$1,700 (\$1,000), marketing, \$146,500 (\$132,000), \$6,500 for retirement, which was included in the employee benefits category last year, and \$25,400 for a newly created compliance category. Items which have decreased compared to those budgeted

for 1994-95 (in parentheses) are: Equipment purchases, \$2,000 (\$3,000), FICA employer, \$3,100 (\$4,250), employee benefits (health and dental), \$7,000 (\$13,500), research, \$48,500 (\$80,000), and (\$8,000) for contract outside labor, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of \$0.10 per 50-pound bag or equivalent of Vidalia onions, the same as last year. This rate, when applied to anticipated shipments of 3,017,500 50-pound bags or equivalents of Vidalia onions, would yield \$301,750. The Committee also anticipates shipments of 50,000 50-pound bags of previously unassessed Vidalia onions which have been in storage, which will yield an additional \$5,000 in assessment income. This, along with \$4,250 in interest income and \$32,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve as of September 15, 1995, amounted to over \$173,000 and were within the maximum permitted by the order of three fiscal periods' expenses. However, at its September 21, 1995, meeting the Committee voted to refund \$100,000 of this amount pro rata to handlers who paid assessments during the 1992-93, 1993-94, and 1994-95 fiscal periods. To determine each handler's proportionate share, the Committee plans to total the excess funds for each of these fiscal periods, divide this excess by the total assessments levied on all handlers during this period, and apply the resulting percentage to the assessments paid by each individual handler during the three-year period. Funds remaining in the reserve will be adequate for administrative operating expenses, if needed.

An interim final rule was published in the Federal Register on September 19, 1995 (60 FR 48361). That interim final rule added § 955.208 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through October 19, 1995. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995-96 fiscal period began on September 16, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the Federal Register as an interim final rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim final rule amending 7 CFR part 955 which was published at 60 FR 48361 on September 19, 1995, is adopted as a final rule without change.

Dated: December 6, 1995.
Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95-30234 Filed 12-11-95; 8:45 am]
BILLING CODE 3410-02-P

7 CFR Part 959

[Docket No. FV95-959-2IFR; Amendment 1]

Onions Grown in South Texas; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized administrative expenses for the South Texas Onion Committee (Committee) under M.O. No. 959. This interim final rule increases the level of authorized expenses and

establishes an assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur additional expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1995, through July 31, 1996. Comments received by January 11, 1996 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX 202-720-5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210-682-2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This amended interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995-96 fiscal period, which began August 1, 1995, and ends July 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before